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In the

Supreme Court of the United States

OCTOBER TERM, 1984

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., *et al.*,
Appellants,

vs.

JIM EDGAR, Secretary of the State of Illinois, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

Motion to Dismiss or Affirm of Appellee Jim Edgar, Secretary of State of Illinois and of Appellee—Intervenors Chicago Automobile Trade Association and the Illinois New Car and Truck Dealers Association

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QUESTION PRESENTED

Appellee and Appellee-Intervenors respectfully suggest that the Question Presented should be rephrased as follows:

Whether a state statute which prohibits the sale of automobiles by licensed dealers on Sundays and which was enacted as part of a comprehensive regulation of the industry in time of economic crisis satisfies the "rational basis test" of traditional Equal Protection Clause analysis.

LIST OF ALL PARTIES BELOW

The parties to this litigation are correctly stated by the Appellants. The Chicago Automobile Trade Association and the Illinois New Car and Truck Dealers Association are non-profit trade associations whose membership is comprised of over 600 and 1,250 franchised new car and truck dealers respectively, constituting the overwhelming majority of such dealers within the state.

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Appellee, Jim Edgar, Secretary of State of Illinois, and the Appellee-Intervenors, the Chicago Automobile Trade Association and the Illinois New Car and Truck Dealers Association, move this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Illinois on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need any further argument.

I.

The State Statute Involved and the Nature of the Case.

A. The Statute

This appeal challenges the validity of Illinois Revised Statutes, ch. 95½, § 5-106 (Supp. 1982).

This statute requires that all new and used motor vehicle dealers in the State of Illinois remain closed "on the first day of the week, commonly called Sunday; . . . ."

B. The Proceedings Below

Appellants commenced this action in the Circuit Court of Cook County, Illinois against Appellee Jim Edgar, the Secretary of the State of Illinois, seeking a declaration that the statute was violative of Article IV, section 13 of the Constitution of the State of Illinois (1970), which forbids the General Assembly to pass a "special or local law when a general law is or can be made applicable." Appellants also contend that the statute violated the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

The Trial Court (Wosik, J.), relying on an earlier case of the Supreme Court of Illinois, *Courtesy Motor Sales* v. *Ward*, 24 Ill.2d 82, 179 N.E.2d 692 (1962), held that the statute violated the Illinois Constitution's prohibition on special legislation. It also held that the statute violated the Equal Protection Clause of the Federal Constitution. (B-1)[1] The Supreme Court of Illinois (Goldenhersh, J.)

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[1] The trial court's inquiry focused on the Illinois prohibition against "special legislation."

reversed the trial court.[2] Noting that, "[i]n recent years the General Assembly has enacted a number of statutes which pertain only to automobile dealers" (A-5), the Court concluded that these statutes "demonstrate a legislative purpose to regulate certain aspects of the business of selling automobiles in a manner different from other retail enterprises. The statute here involved is part of the regulatory scheme. . . ."[3]

II.

The Case Presents No Substantial Question Not Previously Decided by the Court

This Court has "consistently deferred to legislative determinations concerning the desirability of statutory classifications affecting the regulation of economic activity and the distribution of economic benefits." *Idaho Department of Employment* v. *Smith,* 434 U.S. 100, 101 (1977) (per curiam). Such classifications come to this Court with "a presumption of rationality that can only be overcome

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[2] Like the trial court, the Supreme Court of Illinois focused primarily on the state constitutional provision and specifically disapproved of the application of *Courtesy Motor Sales* v. *Ward,* 24 Ill.2d 82, 179 N.E.2d 692 (1962), to this statute.

[3] The Court specifically noted that, in the last several years, the General Assembly has enacted a scheme for the licensing of new and used vehicle dealers, Ill. Rev. Stat. ch. 95½, §§ 5-101, 5-102 (1981), the Motor Vehicle Franchise Act, Pub. Act 81-43, 1981 Ill. Laws 192 (Ill. Rev. Stat. ch. 121½, §§ 751 et. seq., (1981)), and the New Car Buyer Protection Act, Pub. Act. 83-768, 1983 Ill. Laws 5003 (effective January 1, 1984). It has also imposed record-keeping requirements on this industry which are not required of many retailers. *See* Ill. Rev. Stat. ch. 95½, § 5-401 (1981).

by a clear showing of arbitrariness and irrationality." *Hodel* v. *Indiana,* 452 U.S. 314, 331-32 (1981) (citations omitted). Indeed, the Court has repeatedly made it clear that it is not the responsibility of those defending the state statute to shoulder the burden of justifying the classification. Rather, "those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." *Vance* v. *Bradley,* 440 U.S. 93, 111 (1979) (citing *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61, 78-79 (1911)); *accord Schlib* v. *Kuebel,* 404 U.S. 357, 364 (1971); *United States* v. *Maryland Savings-Share Insurance Corp.,* 400 U.S. 4, 6 (1970) (per curiam). Indeed, absent such an explicit showing by those seeking judicial frustration of the legislative intent, the Court has concluded that the legislature *"could* have concluded rationally that" certain facts were true which would support the legislative judgment. *McGinnis* v. *Royster,* 410 U.S. 263, 274 (1973) (emphasis supplied); *see also Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 487 (1955). "[T]he law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *Williamson,* 348 U.S. at 487-88.

Here, unlike the situations in *McGinnis* and *Williamson,* it was not necessary for the state courts—nor is it necessary for this Court—to speculate as to the economic and social difficulties perceived by the legislature and the Governor at the time of the passage of this legislation. The automobile industry constitutes a major seg-

ment of the Illinois economy, and, at the time of the passage of this legislation, it suffered from a severely depressed market for new automobiles and trucks. In such an economic atmosphere, the already highly competitive nature of the industry became even more intense. Many dealers, knowing their survival depended on retaining their share of an ever-shrinking market, remained open seven days and nights a week despite the prohibitive costs associated with such scheduling. Salesmen, working on a commission basis, dared not absent themselves whenever their showroom was open. They had to work for unreasonably long hours and reaped meager return for their effort. Meanwhile, their private activities—including their family lives —suffered significantly.[4] The

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[4] Automotive News, a respected national trade publication, reported new car registrations, based on an R. L. Polk and Co. statistical report, had decreased from 8,443,919 to 7,754,342 from 1981 to 1982 (Copyright, 1983, Automotive News). Furthermore, the National Automobile Dealers Association reported that the number of franchised new car dealers in the greater Chicagoland region dropped from 579 on January 1, 1980 to 490 on January 1, 1983.

Neither the appellants nor the appellees suggest that the purpose of this statute was to accommodate the religious needs of the salesmen. Nor do they contend that its effect is to aid religion. This case does not, therefore, raise the issues presented in *Thornton* v. *Caldor, Inc.*, 191 Conn. 336, 464 A.2d 785 (1983), *cert. granted,* 104 S.Ct. 1438 (1984) (No. 83-1158), now *sub judice.* Nor is the purpose of this statute to create a common day of rest. Therefore, appellants' reading of *McGowan* v. *Maryland,* 366 U.S. 420 (1961), Jurisdictional Statement at 13, even if it is correct, is irrelevant. Actually, *McGowan* and its companion cases support our basic contention that a "statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

Governor while expressing his view that, as a general rule, he did not approve of legislation placing special restrictions on one industry,[5] nevertheless stated that, given the economic and social situation before him, such legislation was indeed necessary.

The rationality of the approach taken by the Governor and the General Assembly of Illinois finds support in the approaches of other states. In upholding the constitutionality of a Sunday Closing statute which singled out the same industry, the Supreme Court of Indiana wrote:

> [A]s to the manner in which the business is conducted, we know that each manufacturer makes the maximum number of cars which he believes the market can consume and ordinarily changes the models

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[4] (Continued)
Id. at 426. Of course, a state may apply a more stringent standard. *See, e.g. Rutledge* v. *Gaylord's, Inc.,* 233 Ga. 694, 213 S.E.2d 626 (1975); *Skag-Way Department Stores, Inc.* v. *City of Omaha,* 179 Neb. 707, 140 N.W.2d 28 (1966); *County of Spokane* v. *Valv-Mart, Inc.,* 69 Wash. 2d 712, 419 P.2d 993 (1966).

We also fail to see the relevance of the appellants' suggestion that the statute is anticompetitive. It regulates the entire state industry in an evenhanded manner. The state courts found no conflict with any other state policy nor was it ever seriously contended in the courts below that the statute contravened any federal policy.

[5] The Governor's remark that the constitutionality of the statute was "not free from doubt" was apparently based on the "special legislation" provision of the Illinois constitution. He specifically noted that his conclusion was based on an "examination of the relevant cases decided by the Supreme Court of Illinois." In any event, he was ultimately persuaded that the issue, even with respect to the state constitutional provision, was "an open one."

each year, thus making it necessary for franchised dealers to sell such cars within the year of the model or suffer serious loss.

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Because of this highly competitive situation and because of the fact that the automobile is a high-priced article, with limited numbers of buyers, the operation of such retail business on Sunday by any substantial number of dealers forces other dealers to operate on Sunday regardless of their personal desires in order to maintain their competitive positions. During recent years it is common for many of such businesses to operate not less than 12 hours per day during the week and not less than eight to ten hours on Sunday. Salesmen for such establishments are customarily employed upon a commission basis only, which arrangement almost compels them to work whenever the establishment is open and especially on Sunday when special appeal is made for customer traffic.

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. . . . Because of the character of the business and the manner in which it is conducted, those who would prefer not to operate on Sunday find themselves almost compelled to do so in order to maintain their competitive position and all who operate on Sunday do so under mental and nervous pressure.

Tinder v. *Clarke Auto Co.*, 238 Ind. 302, 316-18, 149 N.E. 2d 808, 815-16 (1958). Chief Justice Vanderbilt of New Jersey was even more blunt:

In the present state of Sunday activity in this automotive age, there are sections of our highways stretching for miles almost exclusively devoted to the sale of new and used cars, where the owners and employees, forced by the unreasonable and competitive lust of some of their neighbors in the trade, are compelled to maintain their business vigil every

> day of the week and for long hours; who can say that this is not inimical to the public good?

Gundaker Central Motors v. *Gassert,* 23 N.J. 71, 82, 127 A.2d 566, 572-73 (1956), *appeal dismissed* 354 U.S. 933 (1957).[6]

Whether the legislature and the Governor were correct in their estimation of the situation confronting Illinois is not for this or any other Court to decide. *Vance* v. *Bradley,* 440 U.S. 93, 111-12 (1979). Similarly, whether the means chosen to eradicate the problem in fact promoted the legislative purpose is not subject to judicial second-guessing. It is sufficient that the legislative distinction "rationally promote[s] the regulation's objectives." *County Board* v. *Richards,* 434 U.S. 5, 7 (1977) (per curiam); *see also Exxon Corp.* v. *Governor of Maryland,* 437 U.S. 117, 124-25 (1978) (due process context). Similarly, it is not relevant that the legislature did not, at the time it chose to address the problems of the auto industry, also address similar problems in other parts of the state's economy. As Justice Frankfurter noted in his now-vindicated dissent in *Morey* v. *Doud,* 354 U.S. 457, 472 (1957): "'Legislation which regulates business may well make distinctions depend upon the degree of evil.'" *Id.* at 475 (quoting *Heath & Milligan Manufacturing Co.* v. *Worst,* 207 U.S. 338, 355-56 (1907)). "[E]very line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, how-

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[6] Other states have upheld similar statutes. *Diamond Auto Sales, Inc.* v. *Erbe,* 105 N.W.2d 650 (Iowa 1960); *Mosko* v. *Danbar,* 139 Colo. 172, 309 P.2d 581 (1957); *Irishman's Lot, Inc.* v. *Cleary,* 338 Mich. 662, 62 N.W.2d 668 (1954); *Stewart Motor Co.* v. *City of Omaha,* 120 Neb. 776, 235 N.W. 332 (1931).

ever, is a legislative, not a judicial, function." *Village of Belle Terre* v. *Boraas,* 416 U.S. 1, 8 (1974) (footnote omitted). Unless the distinction is "patently arbitrary or irrational," *U.S. Railroad Retirement Board* v. *Fritz,* 449 U.S. 166, 177 (1980), the judgment of the legislature must be sustained. This case is a particularly poor candidate for heightened judicial scrutiny since the state supreme court found that, as a matter of state law, this statute is part of a broader regulatory scheme enacted to meet the particular conditions of the motor vehicle sales industry in Illinois. The determination by the Supreme Court of Illinois that such a regulatory scheme exists is, of course, binding on this Court. *Missouri* v. *Hunter,* 103 S.Ct. 637, 679 (1983).

This Court has, in recent times, been faced with other invitations to deviate from the established analysis and to assume a more activist role in second-guessing the judgments of state legislatures. It has firmly rejected such invitations. Indeed, in *City of New Orleans* v. *Dukes,* 427 U.S. 297 (1976) (per curiam), it specifically overruled *Morey* v. *Doud,* 354 U.S. 457 (1957), "the only case in the last half century to invalidate a wholly economic regulation solely on equal protection grounds." 427 U.S. at 306. The appellants urge, in effect, that this Court return to the days of *Morey* v. *Doud.*[7] Such an

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[7] *Morey* v. *Doud,* 354 U.S. 457 (1957), although understandably now cited by appellants in light of its explicit overruling in *City of New Orleans* v. *Dukes,* 427 U.S. 297 (1976) (per curiam), lends some support to their position. There, the Court struck down as violative of the Equal Protection Clause an exemption for the American Express Company from the provisions of the Community Illinois Currency Exchange Act.

approach would turn equal protection analysis into, to borrow Justice Rehnquist's description from the somewhat parallel context of irrebuttable presumption analysis, "a virtual engine of destruction for countless legislative judgments which have heretofore been thought wholly consistent with the Fifth and Fourteenth Amendments to the Constitution," *Weinberger* v. *Salfi*, 422 U.S. 749, 772 (1975).

Conclusion

Wherefore, Appellee and Appellee-Intervenors respectfully submit that the question upon which this cause depends is so unsubstantial as not to need further argument, and they respectfully move the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Illinois.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 1984, 3 copies of this motion to dismiss or affirm were mailed, postage prepaid, to Clark M. Clifford, 815 Connecticut Avenue, N.W., Washington D.C. 20006. I further certify that all parties required to be served have been served.

.....

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